

CHAPTER 3 ADMINISTRATIVE HEARINGS OF CONTESTED CASES

[Prior to 10/22/86, Insurance Department[510]]

191—3.1(17A,502,505) Scope of rules. The rules contained in this chapter and in Iowa Code chapter 17A shall govern all administrative hearings, and all matters related thereto, and are designed to implement the requirements of and aid in the efficient and effective administration and enforcement of the insurance and securities laws of this state. These rules shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, licensing, and reviews including but not limited to:

- 3.1(1)** Securities (Blue Sky Law)—Iowa Code sections 502.204, 502.209, 502.304, 502.607.
- 3.1(2)** Unauthorized insurers—Iowa Code section 507A.7.
- 3.1(3)** Insurance trade practices—Iowa Code section 507B.6.
- 3.1(4)** Insurers supervision—Iowa Code sections 507C.2 and 507C.5.
- 3.1(5)** Insurance assistance Act—Iowa Code section 507D.2.
- 3.1(6)** Conversion—Iowa Code section 508B.7.
- 3.1(7)** Health maintenance organizations—Iowa Code section 514B.26.
- 3.1(8)** Insurance other than life—Iowa Code section 515.133.
- 3.1(9)** Fire and casualty insurance—Iowa Code section 515A.18.
- 3.1(10)** Automobile insurance cancellation control—Iowa Code section 515D.10.
- 3.1(11)** Mutual fire, tornado, hail storm and other assessment insurance associations—Iowa Code section 518A.43.
- 3.1(12)** Medical malpractice insurance—Iowa Code section 519A.10.
- 3.1(13)** Reciprocal or interinsurance contracts—Iowa Code section 520.15.
- 3.1(14)** Insurance holding company systems—Iowa Code section 521A.12.
- 3.1(15)** Licensing of insurance agents—Iowa Code section 522.3.
- 3.1(16)** Business opportunity promotions—Iowa Code section 523B.8.

191—3.2(17A,502,505) Definitions. As used in the rules contained herein, the following definitions apply, unless the context otherwise requires:

“*Commission*” means the Iowa division of insurance, of the department of commerce.

“*Commissioner*” means the commissioner of insurance, an appointee or delegatee.

“*Contested case*” means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statutes to be determined by an agency after an opportunity for an evidentiary hearing.

“*Hearing officer*” means the person assigned to preside over a proceeding whether that be the commissioner or an administrative law judge appointed according to Iowa Code chapter 17A.

“*License*” means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

“*Party*” means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including intervenors.

“*Person*” means any individual, estate, trust, fiduciary, partnership, corporation, association, a governmental subdivision or agency, or public or private organization of any character or any other person covered by the Iowan administrative procedure Act other than an agency.

“*Proceeding*” means licensing, rule making, declaratory ruling, contested cases, review, formal or informal procedures allowed by law.

191—3.3(17A,502,505) Informal settlement. A party to a controversy that may culminate in contested case proceedings may attempt to settle it informally by complying with the procedures as set forth in this rule. No party to such a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

3.3(1) Parties desiring to informally settle a controversy shall set forth in writing the various points of a proposed settlement which may include a stipulated statement of facts.

3.3(2) When signed by the parties to a controversy and the administrative law judge, a proposed settlement shall represent the final disposition of the matter in place of contested case proceedings.

3.3(3) Where there are more than two parties to a controversy involving the insurance division, a separate settlement between a party and the division is permissible.

3.3(4) A proposed settlement which is not accepted or signed by the parties and the administrative law judge shall not be admitted as evidence in the record of a contested case proceeding.

3.3(5) A party requesting a hearing before the commissioner may withdraw the request by permission of the administrative law judge.

191—3.4(17A,502,505) Consolidated hearings. When request for hearing is made and there is another request for a hearing pending with respect to the same party, the administrative law judge may conduct a consolidated hearing on such pending requests for hearing if practical. When a consolidated hearing is held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the other, and a separate or consolidated decision shall be made as appropriate.

191—3.5(17A,502,505) Summary orders. When action is permitted to be taken without a prior hearing, the agency's order shall be sent to the last known address of the party by certified mail, return receipt requested. The order shall state the reasons for the agency action, cite the law or rule involved, and state that the party will be afforded a hearing if a hearing is requested within 30 days of the date of the signing of the order.

191—3.6(17A,502,505) Notice and time of hearing.

3.6(1) Notice of the hearing shall be prepared in the form of an order and, unless otherwise prohibited by statute or rule, be given in accordance with the provisions of Iowa Code section 17A.12, or in any one of the following ways at least 15 days before the date of the hearing unless the parties agree to an earlier date:

- a. Notice may be given by hand delivery of the notice papers.
- b. Notice may be mailed to the last known address of a party by certified mail.
- c. In cases involving ten or more parties, notice may be given by ordinary mail.

3.6(2) The hearing in a contested case shall be held within 45 days after the date of the notice of hearing unless continued by the administrative law judge for good cause with at least 15 days' notice to the parties.

191—3.7(17A,502,505) Prehearing conference. Prehearing conferences between parties to a contested case are encouraged and may be initiated by any party or the administrative law judge. Such conferences shall be informal and provide an opportunity to determine the issues to be presented, the number and names of witnesses expected, objections which may be made to evidence, or any other matter which will expedite the hearing or lead to an informal disposition of a contested case pursuant to Iowa Code section 17A.12(5).

191—3.8(17A,502,505) Conduct of proceedings. A proceeding shall be conducted by an administrative law judge.

3.8(1) The administrative law judge at a hearing shall, among other things:

- a. Open the record and receive appearances;
- b. Administer oaths, and issue subpoenas;
- c. Enter the notice of hearing into the record;
- d. Receive testimony and exhibits presented by the parties;
- e. In the administrative law judge's discretion, interrogate witnesses;

f. Rule on objections and motions; and

g. Issue a proposed decision containing findings of fact and conclusions of law.

3.8(2) Evidentiary proceedings shall be oral and open to the public unless prohibited by statute, and shall be transcribed either by mechanical means or by certified shorthand reporters. The record of the oral proceedings or transcription shall be filed with and maintained by the division for at least five years from the date of the decision.

3.8(3) Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. A copy of any transcript made shall be available to each party. A party requesting a certified shorthand reporter or court reporter shall arrange for that person's attendance at a hearing.

3.8(4) Whenever a hearing is tape recorded by the insurance division, copies of a recording shall be available to all parties. A reasonable amount will be charged to cover the costs of providing each copy.

191—3.9(17A,502,505) Witness fees.

3.9(1) Witnesses subpoenaed shall be entitled to receive \$10 for each full day's attendance, and \$5 for each attendance less than a full day, and mileage expenses at the rate of 15¢ per mile for each mile actually traveled.

3.9(2) Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the agency or presiding officer, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed \$150 per day while so employed.

191—3.10(17A,502,505) Subpoenas.

3.10(1) Parties who desire the issuance of a subpoena shall file with the administrative law judge or the commissioner a written request for a subpoena, designating the witnesses or documents to be produced and the address or location of each.

3.10(2) The responsibility for having a subpoena served by a peace officer or otherwise shall be upon the party who requests the issuance of the subpoena. The party who requests a subpoena shall pay the cost of having the subpoena served and the cost of the witness fees and travel for witnesses. Such costs are not recoverable at the conclusion of the contested case, even if the party prevails.

191—3.11(17A,502,505) Evidence having probative value. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

3.11(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The administrative law judge shall give effect to the rules of privilege recognized by law.

3.11(2) Evidence not provided to a requesting party by subpoena, through discovery or during any informal procedures shall not be admissible at the hearing.

3.11(3) Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

3.11(4) Objections to evidentiary offers may be made at the hearing.

191—3.12(17A,502,505) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available. When an original is admitted in evidence, a copy may be substituted later for the original or such part as may be material or relevant upon leave granted in the discretion of the administrative law judge.

191—3.13(17A,502,505) Official notice. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the official notice of such a fact prior to the issuance of the decision in the contested case proceeding unless the administrative law judge determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

191—3.14(17A,502,505) Default.

3.14(1) When a party fails to appear at a hearing, after proper service of notice, the administrative law judge may reschedule the hearing, proceed with a hearing in the absence of that party and make a decision, consider the appeal abandoned and dismiss it, or dispose of a contested case adverse to a party who defaults.

3.14(2) Upon default, the allegations of or the issues set out in the notice of hearing may be taken as true or deemed proved without further evidence.

3.14(3) A default occurs when a party fails to appear at a hearing.

191—3.15(17A,502,505) Appeals.

3.15(1) A proposed decision rendered by an administrative law judge shall become the final decision of the agency unless there is an appeal to, or review on motion of, the insurance commissioner within 20 days from the date of the proposed decision.

3.15(2) On appeal from a proposed decision of an administrative law judge pursuant to Iowa Code section 17A.15(3), the issues shall be limited to those raised before the administrative law judge. No new issues will be considered for the first time on appeal.

This rule is intended to implement Iowa Code sections 17A.3(1) “b” and 505.8.

191—3.16(17A,502,505) Ex parte communications.

3.16(1) No person shall engage in an ex parte communication prohibited by Iowa Code sections 17A.17(1) and 17A.17(2).

3.16(2) The recipient of any prohibited ex parte communication shall submit the communication if written, or a summary of the communication if oral, for inclusion in the record of the contested case proceeding. When the administrative law judge is the recipient of such communication, an order shall be entered placing it in the record. Any party shall be given an opportunity to respond to statements made in such a communication.

191—3.17(522) Agents disciplined in other jurisdictions.

3.17(1) When an agent is disciplined in another state, whether by consent order, administrative law judge decision, or otherwise, upon notice and hearing, an administrative law judge may issue an order containing similar discipline based solely on the other state’s action.

3.17(2) At the hearing, the division need only show proof of action taken in the other state, by copy of the order issued there and that the actions which brought about the order reflect on the agent’s character.

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